

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STERLING MERCHANDISING, INC.,)	Case No. C 08-80108 SBA (JCS)
)	
Plaintiff,)	STIPULATION AND [PROPOSED]
)	ORDER MODIFYING MAY 19, 2008
v.)	<u>ORDER</u>
)	
DREYER'S GRAND ICE CREAM, INC.)	
)	
Defendant.)	
)	
)	

WHEREAS, on May 13, 2008, Sterling Merchandising, Inc. filed a Motion to Compel Dreyer's Grand Ice Cream, Inc. Compliance with Subpoena *Duces Tecum*;

WHEREAS, on May 19, 2008, the Court issued an order requiring lead trial counsel to meet and confer in person by May 27, 2008 and if matters at issue in the Motion remain unresolved, to submit a detailed Joint Letter by May 30, 2008;

WHEREAS, the foregoing schedule is highly burdensome in view of the following circumstances that may not have been apparent:

1 1. Carmine Zarlenga, defendants' lead trial counsel, was out of the country when the
2 order was issued and not scheduled to return until May 27, 2008. While Mr. Zarlenga offered to
3 attempt to rearrange his schedule, it would be very difficult to meet and confer in person by May
4 27, 2008;

5 2. An in person meet and confer imposes significant burden on the parties in that Mr.
6 Zarlenga's offices are located in Washington, D.C. and David Gilles, plaintiff's trial counsel, is
7 located in Madison, Wisconsin;

8 WHEREAS, Defendants' counsel represents the respondent, Dreyer's Grand Ice Cream,
9 Inc., in this matter pending before this court;

10 WHEREAS, Plaintiff's and defendants' counsel have met and conferred regarding the
11 matters in dispute in its Motion on August 16 and August 28, 2007 and on March 21, March 27,
12 and April 11, 2008. Plaintiff's counsel confirmed respondent's position in December 21, 2007
13 correspondence, March 21, 2008 correspondence, April 4, 2008 correspondence and March 31,
14 2008 email and April 11, 2008 email;

15 NOW, THEREFORE, it is hereby stipulated and ordered that the Court's May 19, 2008
16 Order regarding the dates and manner for lead trial counsel to meet and confer regarding matters in
17 dispute is modified as follows:

18 A. Lead trial counsel shall meet and confer no later than May 30, 2008;

19 B. In the event that counsel are unable to resolve the matters at issue, lead trial counsel
20 shall provide a detailed Joint Letter to the Court by June 6, 2008, regarding their meet-and-confer
21 session; and

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C. Lead trial counsel are permitted to meet and confer via telephone conference call.

Respectfully Submitted,

DATED: May 22, 2008

For Plaintiff Sterling Merchandising, Inc.:

/s/ Craig C. Corbitt

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DATED: May 22, 2008

For Defendant Dreyer's Grand Ice Cream, Inc.:

/s/ Erik Koons (with permission)

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IT IS SO ORDERED:

DATED: _____

Hon. Joseph C. Spero
United States Magistrate Judge

PROOF OF SERVICE

Re: STERLING MERCHANDISING, INC., v. DREYER'S GRAND ICE CREAM, INC.
Case No. 08-80108 SBA (JCS)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Zelle, Hofmann, Voelbel, Mason & Gette LLP, 44 Montgomery Street, Suite 3400, San Francisco, CA 94104.

On May 22, 2008, I served the within document(s) described as:

1. STIPULATION AND [PROPOSED] ORDER MODIFYING MAY 19, 2008 ORDER
on the interested parties to this action as follows:

Carmine Zarlenga	zarlengac@howrey.com
Erik Koons	koonse@howrey.com
Seth Erbe	seth.erbe@indianowilliams.com
Luis Oliver	loliver@fgrlaw.com

☒ (BY ELECTRONIC MAIL) I caused such document(s) to be emailed to the offices and/or to attorneys of offices of the above named addressee(s).

Executed on May 22, 2008, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/Monica J. Steele
Monica J. Steele